

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into Competition for
Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition for
Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)
**(FCC Triennial Review
Nine-Month Phase)**

**ADMINISTRATIVE LAW JUDGE'S RULING
ADOPTING FURTHER SCHEDULE
FOR BATCH HOT CUT ISSUES**

This ruling sets a further schedule for addressing the Batch Hot Cut issues as required by the FCC Triennial Review Order (TRO). Pursuant to the Administrative Law Judge's (ALJ) Ruling issued October 8, 2003, opening testimony on batch hot cut proposals was served on November 7, 2003, by the incumbent local exchange carriers (ILECs), SBC California (SBC) and Verizon California Inc. (Verizon). A collaborative workshop on batch cut issues was held on November 17, 2003. The goal of the workshop was for parties to seek consensus or at least narrow areas of dispute as to appropriate batch hot cut processes. A Workshop Report was filed by the Commission Staff on November 25, 2003. Unfortunately, the Workshop resulted in no consensus among participants regarding a batch hot cut process.

Participants representing competitive local exchange carriers (CLECs) argue that SBC has not yet presented a workable proposal on batch hot cuts for

any type of service (voice-only or voice plus DSL). The CLECs thus declined to commit to any agreements during the workshop without finalized proposals from SBC. Although SBC was directed by ALJ's ruling to submit its batch cut proposal by November 7, 2003, SBC's November 7, 2003 submittal is characterized by the CLECs as essentially an offer merely to present a detailed proposal at a later date. SBC proposes to submit a final batch cut proposal on December 15, 2003, including detailed process flow charts and its completed "issues tracking matrix" to help identify any remaining batch cut process disputes.

There was also lack of consensus on Verizon's proposed batch hot cut process. Verizon is relying upon existing hot cut processes to scale to potential anticipated migration volumes with respect to California markets. Although Verizon's processes are acknowledged to be robust in other states, CLECs noted that there is limited competitive experience in Verizon's California territory. Accordingly, CLEC parties were not willing to commit to any agreements based on Verizon's proposal.

Accordingly, this ruling sets a further schedule and process for addressing batch hot cut issues as required under the TRO, as discussed below.

I. Proposed Bifurcation of Batch Cut Schedule

Verizon proposes a bifurcation of the schedule so that proceedings on Verizon's batch cut process can move forward first, with SBC's proposal to be addressed on a separate schedule. Verizon also argues that while the ILECs' batch cut processes will no doubt share some similarities, they will be distinct, utilizing different systems and procedures. Verizon thus believes that joint consideration of the Verizon and SBC batch processes will risk significant confusion on the part of the Commission and the parties. Accordingly, Verizon

proposes that CLEC testimony on Verizon's proposal be due December 5, 2003, and that Verizon reply testimony be due on January 9, 2004. Verizon would be ready for hearings by January 26, 2004.

The CLECs oppose bifurcating the schedule to consider Verizon's proposal separately. The CLECs argue that such bifurcation would be inefficient and place on an undue strain on their limited resources available to litigate this issue. Nonetheless, although various CLECs claim there are deficiencies and additional development needed in Verizon's proposal, they generally agree that Verizon's process is closer to being fully developed than that of SBC.

II. SBC Proposed Schedule

SBC proposes the following schedule for batch hot cut issues. On December 4, 2003, SBC proposes to circulate its "consolidated tracking matrix of issues" as raised in its three regions – Midwest, Southwest, and the West (California) with as many SBC responses completed "as possible." SBC recommends a collaborative conference call to discuss its matrix.

SBC proposes that CLECs provide written responses to its December 15 proposal for batch cuts on December 22, 2003, with workshops held via a conference call to further help narrow disputed issues on December 29, 2003. On December 30, 2003, SBC proposes that parties submit a status report to Staff to aid in preparing a report on batch cut issues resolved and disputed. Based on the report, evidentiary hearings would be scheduled, as needed, on any batch cut process issues.

Even though SBC has offered to present its batch cut proposal on December 15, 2003, SBC does not plan to address certain relevant issues until after that date, as noted below.

III. Other Issues

A. TELRIC Pricing

The October 8, 2003 ALJ ruling stated that the batch cut collaborative workshop was to provide “a forum to discuss the means by which appropriate “Total Element Long-Run Incremental Cost (TELRIC) rates can be identified for those batch cut processes on which parties may reach consensus, or those requiring further litigation.” Yet, the ILECs did not address this issue in their November 7, 2003 testimony nor did the workshop resolve this issue. SBC proposes an unspecified date in January 2004 to submit TELRIC compliant prices for its batch cut processes, with CLECs to file preliminary responsive comments within seven days thereafter. SBC suggests that a collaborative workshop on pricing could be held shortly after the CLECs’ comments to help identify and narrow disputed pricing issues.

B. Performance Measures

During the workshop, SBC also indicated that prior to January 17, 2004, it will make recommendations on whether performance measures 9 and 9(a) of the “Joint Partial Settlement Agreement on Performance Measures (JPSA)” (see, D.03-07-035) should be modified to address any unique issues raised by the batch cut processes. SBC recommends that any such issues be presented to the JPSA participants who are expected to meet on or before January 17, 2004 to commence the next performance measure review. SBC also recommends that any such issues be given priority treatment and that they be resolved within 60 days of the commencement of the JPSA review.

C. Line Splitting

Although the ALJ ruling directed that line splitting arrangements be included among the migration scenarios examined in considering an acceptable

batch cut process, SBC did not address this issue in its November 7 testimony, and does not intend to include a batch cut process for line splitting or line sharing in its December 15 batch cut proposal. SBC is identifying and prioritizing various line-splitting and line-sharing scenarios, however, -- including whether any of them involve hot cut and if so what process and priority should be assigned to them -- in a series of 13-state collaborative workshops that SBC initiated. SBC expects that once the network architecture for these scenarios is agreed upon, the various migration scenarios will be defined and addressed. SBC, however, has not proposed any specific schedule, however, for when relevant line-splitting and line-sharing scenarios would be addressed.

Verizon affirms that it has no line splitting arrangements in California and very few line sharing arrangements. Moreover, to the extent there are a small number of line sharing arrangements in California today in which it is involved, Verizon is the voice provider. Thus, Verizon believes that the elimination of UNE-P would not cause any additional demand for customer migrations. Given the low volumes at issue, Verizon denies there is any need to develop a batch process for the migration of such customers in this proceeding.

The CLECs argue that the batch hot cut analysis in this proceeding for both SBC and Verizon must include examination of migration scenarios for batch hot cuts of *existing* customers served by line shared DSL loops (SBC/Verizon voice and CLEC DSL) and line split DSL loops (provisioned on UNE-P). The CLECs propose that SBC and Verizon be required to participate in a second batch hot cut collaborative in December limited to an examination of hot cuts for line-shared and line-split loops.

IV. CLEC Proposed Schedule

The CLECs argue that the parties need to know the details of proposed batch hot cut processes before they are able to thoroughly and adequately address the operational and economic impairment issues that are to be addressed in their December 12 opening testimony. These issues overlap with batch hot cut issues.

The CLECs argue that the Commission should mandate an immediate deadline by which SBC must either present a detailed, workable batch hot cut process for voice-only, line shared and line split loops or else find that CLECs are impaired for the purpose of this nine month case, and therefore must continue to have access to switching UNEs from SBC unless and until SBC proposes, implements, tests and supports a robust batch hot cut process.

CalTel claims that because SBC failed to provide its full batch cut testimony on the schedule ordered by the ALJ, there should be no further opportunity for SBC to augment its showing on this issue. Cal Tel proposes that a ruling be issued for motions for summary judgment as to whether SBC has made a sufficient showing concerning its batch cut process to justify continued resources to be expended in this nine-month proceeding on this issue. Cal Tel argues that parties should be permitted to rely on SBC's November 7, 2003 batch cut proposal as the basis for testimony on economic and operational impairment.

SBC and Verizon have no stated plans to perform additional testing to prove that the batch cut processes the Commission adopts will work. The CLECs contend that the ILECs' refusal to conduct testing is inadequate, and that any other approach could result in serious problems, including customer outages if the proposed processes do not work at commercial volumes. The CLECs contend that if the ILECs cannot present proof that their batch cut process works,

including testing thereof, within the nine-month schedule, then the Commission may not lift the finding of impairment.

The CLECs propose that parties be given until January 15, 2003 to respond to both SBC and Verizon's December 15, 2003. batch hot cut proposals. The CLECs argue that this proposed schedule will not allow CLECs to present comprehensive testimony on switching impairment on December 12, 2003, because parties need to know the details of the ILECs' proposed batch hot cut processes to thoroughly address operational and economic impairment. Thus, the CLECs request to incorporate and address any additional detail about batch hot cut processes either in their reply testimony or in separate supplemental testimony.

V. Adopted Schedule

In the interests of economizing the resources of litigants, any further workshops, testimony, or evidentiary hearings on batch cut processes shall be consolidated for both SBC and Verizon. While the schedule shall be consolidated procedurally, parties must submit separate testimony specifically addressing the distinct batch cut processes proposed each by SBC and Verizon. While a separate and distinct batch cut process must be reviewed and approved for each ILEC, however, there are still procedural efficiencies to be gained by scheduling any subsequent workshops or hearings for both ILECs within a single coordinated phase.

SBC shall submit additional batch cut testimony since its November 7 testimony did not provide a complete proposal of its batch cut process. The additional testimony shall set forth a specific, complete, concrete batch hot cut proposal and shall be due December 15, 2003. To the extent that any further augmentation of the Verizon batch cut proposal is required to make it complete,

Verizon shall also submit such supplemental testimony on December 15, 2003. In particular, Verizon should identify Operations Support Systems (“OSS”), processes and procedures that are different in California than for other regions of Verizon’s service territories. The CLECs indicate that Verizon-East’s OSS have been more extensively detailed, and CLECs in California need to have the same level of detail so they can identify technical and operational differences.

In addition, Verizon's current hot cut process is manual and non-flow-through, both of which must be corrected. Verizon has no proposal for migrating line sharing or line split loops with voice and DSL.

To the extent that either ILEC delays addressing the relevant batch cut issues identified above beyond December 15, 2003, the risk increases that the goal of adopting a batch cut process by the end of the FCC’s nine-month deadline will not be met.

Since parties will not have the ILECs’ full batch cut testimony before December 15, 2003, the direct testimony on mass market switching issues due on December 12, 2003 regarding mass market switching will consequently be incomplete. Since parties will not know the details of proposed batch hot cut processes, they cannot thoroughly address operational and economic impairment in that testimony. Nonetheless, the December 12, 2003 testimony shall address all other aspects of operational and economic barriers other than those relating to the batch cut process.

A collaborative workshop shall be set for 10:00 a.m., on December 15, 2003, for the purpose of examining the ILECs’ existing hot cut processes for migration of existing customers served by line- shared and line-split DSL loops.

SBC’s proposed schedule for CLEC responses to its December 15 testimony gives parties insufficient time to review and respond in a complete

manner. Parties shall submit supplemental testimony, to be due on January 15, 2004, regarding impairment as it relates to the batch cut process, together with any critiques of and/or alternative batch cut process proposals. Upon receipt of the January 15 testimony, further determination will be made concerning the need for workshops and/or evidentiary hearings to resolve batch cut issues.

The date of January 7, 2004 shall be set for SBC and Verizon to serve testimony on TELRIC compliant prices relating to their batch cut processes. Other parties' testimony in response to the TELRIC proposals shall be due on January 28, 2004. As part of this testimony, parties may supplement their showing on economic impairment to the extent that the proposed TELRIC charges for batch hot cuts implicate the assessment of economic impairment. Evidentiary hearings on batch hot cut issues, to the extent required, shall begin immediately upon completion of the mass market switching evidentiary hearings that have already been scheduled for January 26 through February 6, 2004.

V. Consequences of Incomplete Showing on Batch Cut Process

CLECs argue that failure to adopt an acceptable batch cut process within the nine months schedule would constitute a competitive barrier justifying an impairment finding even if the switching triggers were otherwise met. Verizon disagrees with this view, arguing that there would be no basis to delay a finding of "no impairment" beyond the nine-month schedule if the triggers are met, even if an acceptable batch cut process had not been finalized.¹

¹ See PHC Transcript (PHC-19)/ 1199:19-27.

The ILECs bear responsibility to propose, implement, test and support a workable batch hot cut process necessary to migrate customer loops from ILEC switches to CLEC switches. To the extent that the ILEC takes the position that its batch cut process presented in the December 15, 2003, supplemental testimony is complete without testing, and without addressing batch cut migration of customers served by line-split DSL loops, they each bear the responsibility of defending the merits of that position.

Opposing parties may take into account any perceived deficiencies or incompleteness in the ILECs' proposals for a batch cut process in their testimony, including omission of line splitting migration scenarios, in addressing economic and operational barriers with respect to mass market switching. To the extent that parties believe that an ILEC has failed to meet the requirements for an acceptable batch cut process, parties can present testimony arguing for a finding that such deficiency constitutes a barrier impairing competition.

The Commission will take evidence on this issue and determine if each of the ILECs has satisfied appropriate standards justifying approval of a batch cut process that can overcome an impairment finding. In the event that the ILECs fail to produce an acceptable batch hot cut process that can be litigated and approved within the nine-month schedule, the Commission will consider whether this means that CLECs are impaired with respect to mass market switching, and therefore must continue to have access to switching UNEs until an acceptable batch hot cut process can be approved and implemented.

IT IS RULED that:

1. The batch cut schedule for SBC California (SBC) and Verizon California Inc. (Verizon) shall not be bifurcated, but shall proceed on a parallel track,

although parties shall address the merits of the batch cut process of each incumbent local exchange carrier (ILEC) through separate, distinct testimony.

2. SBC and Verizon shall serve supplemental testimony, as outlined above, setting forth their complete batch cut process on December 15, 2003.

3. A collaborative workshop on the hot cut process for line split and line shared loops shall be convened starting at 10:00 a.m., on December 15, 2003, at the Commission's Courtroom, at 505 Van Ness Avenue, San Francisco, California.

4. Parties other than the ILECs shall serve testimony in response to each of the ILECs' December 15, 2003 batch cut proposals on January 15, 2004.

5. SBC and Verizon shall serve testimony regarding Total Element Long-Run Incremental Cost (TELRIC)-compliant pricing for their proposed batch cut process on January 7, 2004.

6. Other parties shall serve testimony on January 28, 2004 in response to the ILECs' TELRIC pricing proposals for the batch cut process.

7. The need for and scheduling of workshops and/or evidentiary hearings to resolve batch cut issues shall be determined after receipt of testimony. To the extent that evidentiary hearings are required on batch cut issues, they shall be sequenced to follow immediately upon the conclusion of mass market switching hearings, currently scheduled to conclude by February 6, 2004.

Dated December 2, 2003, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail and by e-mail this day served a true copy of the original attached Administrative Law Judge's Ruling Adopting Further Schedule for Batch Hot Cut Issues on all parties of record in this proceeding or their attorneys of record.

Dated December 2, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

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